

PETER J. HONESTO,)	No. C 11-01600 JF (PR)
)	
Petitioner,)	ORDER OF DISMISSAL;
)	GRANTING MOTION FOR LEAVE
vs.)	TO PROCEED <i>IN FORMA</i>
)	<i>PAUPERIS</i>
)	
JAMES HARTLEY, Warden,)	
)	
Respondent.)	
)	
)	(Docket No. 2.)

A district court must dismiss claims presented in a second or successive habeas petition challenging the same conviction and sentence unless the claims presented in the previous petition were denied for failure to exhaust. See 28 U.S.C. § 2244(b)(1); *Babbitt v. Woodford*, 177 F.3d 744, 745-46 (9th Cir. 1999).

1 Additionally, a district court must dismiss any new claims raised in a successive
2 petition unless the petitioner received an order from the court of appeals authorizing
3 the district court to consider the petition. See 28 U.S.C. § 2244(b)(2).

4 Here, the instant petition challenges the same sentence as the previous
5 petition and petitioner has not presented an order from the Ninth Circuit Court of
6 Appeals authorizing this Court to consider any new claims. See 28 U.S.C. §
7 2244(b)(3)(A). Petitioner's first petition was adjudicated on the merits in this
8 Court's order denying the petition on March 7, 2011. Accordingly, this Court must
9 dismiss the instant petition in its entirety.

10 The instant petition is DISMISSED as a second and successive petition
11 pursuant to § 2244 (b)(1).

12 Petitioner's motion for leave to proceed in forma pauperis, (Docket No. 2) is
13 GRANTED.

14 IT IS SO ORDERED.

15 DATED: 5/5/11


JEREMY FOGEL
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

PETER HONESTO,

Petitioner,

v.

JAMES HARTLEY, Warden,

Respondent.

Case Number: CV11-01600 JF

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 5/19/11, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Peter J. Honesto D-55459
CA State Prison-Avenal
P.O. Box 9
Avenal, CA 93204

Dated: 5/19/11

Richard W. Wieking, Clerk